

S/L 16
08.03.2022
Court. No. 19
GB

W.P.A. 8731 of 2021

Haji Soliaman Gazi
VS
The State of West Bengal & Ors.

Mr. Indrajit Bhattacharjee.

...for the Petitioner.

*Mr. Prasanta Giri,
Md. Hasanuzzaman.*

...for the State.

*Mr. Raghunath Chakraborty,
Mrs. Amrita De.*

...for the Municipality.

Affidavit-of-service filed in Court today be kept with the record.

Despite service, none appears on behalf of the respondent nos.6 and 7. The writ petition is taken up in their absence as the Court is of the opinion that the dispute raised herein, must be adjudicated by the Maheshtala Municipality in terms of the provisions of Section 218 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the 'said Act').

The writ petitioner claims to be the owner of the premises situated at L.R. Dag No.195 of Mouza-Panchur under Maheshtala Municipality.

The municipality submits that a stop work notice has already been issued. The municipality detected some unauthorized construction and initiated proceedings under Section 204A of the said Act.

The police authorities have filed a report indicating that on the basis of the complaint filed by the municipality, the authorities had already registered Rabindranagar PS

Case No.328 of 2020 dated December 23, 2020. That the investigation resulted in the filing of a charge-sheet.

It is submitted by Mr. Chakraborty, learned advocate appearing on behalf of the municipality that as the sanction plan was in the name of the petitioner, proceeding was initiated against the petitioner as also the developer, who are respondent nos. 6 and 7.

Having considered the rival contentions of the parties, as the municipality has already found some unauthorized construction, the municipality shall act and proceed in accordance with law and reach the proceeding to its logical conclusion upon hearing the petitioner as also the respondent nos.6 and 7.

While disposing of the complaint of the petitioner, the municipality shall adhere to the following procedures:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.6 and 7 within three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent nos.6 and 7 and all other interested parties. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the

authorities may take such interim measures by stopping such construction.

c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the parties.

e) A hearing shall be given to the petitioners and the respondent nos.6 and 7. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.

f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute. The court has not gone into the merits of the claims and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

This order shall not be construed as an exoneration of the petitioner from the charges levelled in the criminal proceeding. The said proceeding shall be carried on in accordance with law.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocates' communication.

(Shampa Sarkar, J.)